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MORTGAGE REVENUE BONDS—MAY BE PURCHASED AND HELD AS INVESTMENT BY TRUSTEES, SINKING FUND OF MUNICIPALITY—WHERE ISSUED BY MUNICIPALITY TO ACQUIRE, CONSTRUCT OR EXTEND PUBLIC UTILITY—ARTICLE XVIII, SECTION 12, CONSTITUTION OF OHIO.

SYLLABUS:

*Mortgage revenue bonds issued by a municipality for the acquisition, construction or extension of a public utility, under the authority of Article XVIII, section 12 of the Constitution of Ohio, may be purchased and held as an investment by the trustees of the sinking fund of such municipality.*

Columbus, Ohio, March 3, 1941.

Bureau of Inspection and Supervision of Public Offices,  
Columbus, Ohio.

Gentlemen:

This will acknowledge receipt of your recent communication, which reads as follows:

“We are inclosing herewith a letter from the City Solicitor of the City of St. Bernard, in which advice is sought concerning the sale of mortgage revenue bonds to the City Board of Sinking Fund Trustees.

As we seem to have no rulings by which we could definitely answer the solicitor's inquiry, may we request your opinion in answer to the following question:

May a Board of Sinking Fund Trustees of a municipality purchase and hold as an investment, mortgage revenue bonds issued by said municipality under authority of section 12 of

Article XVIII of the Ohio Constitution, and section 3619-2 of the General Code?"

The provisions of law governing the investment of moneys by trustees of the sinking fund of a municipality are contained in section 4514 of the General Code, which reads as follows:

"The trustees of the sinking fund shall invest all moneys received by them in bonds of the United States, the State of Ohio, or of any municipal corporation, school, township or county bonds, in such state, and hold in reserve only such sums as may be needed for effecting the terms of this title. All interest received by them shall be re-invested in like manner."

Article XVIII, section 12 of the Constitution of Ohio, to which you refer, is as follows:

"Any municipality which acquires, constructs or extends any public utility and desires to raise money for such purposes may issue mortgage bonds therefor beyond the general limits of bonded indebtedness prescribed by law; provided that such mortgage bonds issued beyond the general limit of bonded indebtedness prescribed by law shall not impose any liability upon such municipality but shall be secured only upon the property and revenues of such public utility, including a franchise stating the terms upon which, in case of foreclosure, the purchaser may operate the same, which franchise shall in no case extend for a longer period than twenty years from the date of the sale of such utility and franchise on foreclosure."

It will be noted that the above statute authorizes the trustees of the sinking fund of a municipal corporation to invest moneys received by them in bonds "of any municipal corporation." It is notable also from the above constitutional provision that mortgage bonds for municipal public utilities issued beyond the general limit of bonded indebtedness prescribed by law shall not impose any liability upon a municipality, but shall be secured only upon the property and revenues of such public utilities.

The sole question presented, therefore, is whether or not mortgage revenue bonds issued by a municipal corporation, under the authority of the section of the Constitution above quoted and payable only from the property and revenue of a municipal utility, and not from the general fund of the municipality, are bonds of a municipal corporation within the meaning of the above section.

Among the definitions of the preposition "of" as given in Webster's International Dictionary, are the following:

“In the most general sense; proceeding from; belonging to; relating to, connected with; concerning. (1) Indicating the place or thing from which anything moves, comes, goes, or is directed or impelled.\* (4) Indicating origin, source, descent or the like. \*(6) Indicating the agent, or person by whom or thing by which anything is done or made.”

With respect to the word “of,” it is stated in 46 C.J., page 902:

“It also may denote or indicate authorship, creation, descent, existence, location, origin, source or that from which something issues, proceeds, or is derived.”

If issued, the bonds in question are issued by and in the name of the municipality, the municipality is the obligor, and as such promises to pay at a fixed future date a certain sum of money with interest. It therefore seems to me that such bonds, even though the same are payable only from a special fund and are not general obligations of the municipal corporation, are nevertheless bonds of such municipal corporation. That such bonds are so regarded by the General Assembly is evidenced by the provisions of section 2293-14 of the General Code, which reads in part:

“The net indebtedness created or incurred by a municipal corporation without a vote of the electors, shall never exceed one per cent of the total value of all property in such municipal corporation as listed and assessed for taxation.

The net indebtedness created or incurred by a municipal corporation shall never exceed five per cent of the total value of all property in such municipal corporation as listed and assessed for taxation.

In ascertaining the limitations prescribed by this section the bonds excepted in section 2293-13 and the following bonds, and the amounts held in any sinking fund, and other indebtedness retirement fund for their retirement shall not be considered: \* \* \*

(f) Excess condemnation or mortgage bonds issued under the authority of sections 10 and 12 of Article XVIII of the constitution of Ohio and other bonds or notes not secured by the general credit of the municipality.”

Certainly, if the type of bonds here under consideration are not bonds of a municipal corporation, the language of the above statute which provides that such bonds shall not be considered in calculating the net indebtedness of a municipality, would have been unnecessary and the language contained in paragraph (f) would be superfluous. The presumption is that every word in the statute is designed to have some effect and that every part thereof is needed to effectuate some purpose. Hence,

a construction which would render a part of the statute superfluous should be avoided.

It is also important to note and consider the fact that section 4514, supra, was enacted in 1908 (99 O. L. page 136), while the constitutional provision above set forth did not become effective until September 3, 1912. In other words, in the year 1908, bonds of a municipal corporation could not conceivably include mortgage revenue bonds, and therefore the question is whether the language, which in itself is without doubt broad enough to include such type of bonds, should now be given its natural and ordinary meaning or should be restricted in its meaning because at the time of the enactment of the statute embodying it, the Constitution and statutory law of Ohio was such that the language in question could only have application to general obligation bonds.

In regard thereto, it must be borne in mind that in construing a statute there should be no departure from the ordinary or natural meaning of the words contained therein unless it is apparent from the text of the entire statute that the literal meaning of such words is to be restrained. On this point, it is stated in 37 O. Jur., page 542:

“As a general rule, words of a statute, in common use or other than terms of art or science, will be construed in their ordinary acceptation and significance and with the meaning commonly attributed to them. Indeed, the intention of the legislature to use statutory phraseology in such manner has even been presumed. Ordinarily, such words are to be given their natural, literal, and full meaning. These rules are applicable unless such an interpretation would be repugnant to the intention of the legislature, as plainly appears from a construction of the entire statute.”

Moreover, in this connection it should be pointed out that if the language of a statute is broad enough to apply to conditions which, at the time of the enactment thereof did not exist, but which might later come into existence, such new conditions would fall within the meaning of the statute. The rule with respect thereto is stated in 37 O. Jur., page 796, as follows:

“The general rule is that if the language used in a statute is broad enough to include unknown things which might come into existence in the future such things would be deemed to come within, and be subject to, the evident meaning of the terms used. This rule is applicable where the new thing or condition constitutes merely a new species of a genus coming clearly within the terms of the statute, even though the new species comes into existence otherwise than through statute.”

The conclusion that mortgage revenue bonds as contemplated by the above constitutional provision are bonds of a municipality also finds support in an opinion of one of my predecessors. In said opinion (Opinions of the Attorney General, 1929, Vol. 1, page 66), it was held:

“Mortgage bonds of a municipality issued for the acquisition, construction or extension of a public utility, under authority of Section 12 of Article XVIII of the Constitution of Ohio, may be refunded as provided in section 2293-5 of the General Code; but such refunding bonds shall not pledge the general credit of the municipality, and the principal and interest shall be secured only by the pledge of the property and revenues of such utility.”

Section 2293-5, General Code, referred to in said opinion, read at the time it was under consideration therein, in part as follows:

“With the approval of the tax commission of Ohio, the taxing authority of any subdivision may refund any outstanding bonds of the subdivision which are about to mature, except serial bonds, and may refund serial bonds, issued in anticipation of the collection of special assessments, when for any reason, and to the extent that such collection cannot be made.”

It is significant to note that the above section provides that “bonds of the subdivision” may be refunded. Therefore, in order to arrive at the conclusion above stated, it was necessary to determine that mortgage revenue bonds issued under authority of Article XVIII, section 12 of the Constitution were “bonds of the subdivision.”

In view of the foregoing observations, it is therefore my opinion that mortgage revenue bonds issued by a municipality for the acquisition, construction or extension of a public utility, under the authority of Article XVIII, section 12 of the Constitution of Ohio, may be purchased and held as an investment by the trustees of the sinking fund of such municipality.

Respectfully,

THOMAS J. HERBERT,  
Attorney General.